

Health and safety at work: workers who are pregnant, have recently given birth or are breastfeeding

2008/0193(COD) - 03/10/2008 - Legislative proposal

PURPOSE: to improve the protection offered to pregnant workers and workers who have recently given birth or are breastfeeding and to extend the minimum length of maternity leave from 14 to 18 weeks.

PROPOSED ACT: Directive of the European Parliament and of the Council.

BACKGROUND: in March 2006, the European Council stressed the need for a better balance between work and private life in order to achieve economic growth, prosperity and competitiveness, and approved the European Pact for Gender Equality. In December 2007 and March 2008, the Council called on the Commission to evaluate the legal framework supporting reconciliation and the possible need for improvement in this area and reiterated that further efforts should be made to reconcile work with private and family life for both women and men.

The European Parliament has consistently called for improvements to the existing legislation

relating to the protection of pregnant workers and the granting of parental leave, and for

measures to improve the reconciliation of professional, private and family life (for example,

in its [resolution of 21 February 2008 on the demographic future of Europe](#), Parliament called on the Member States to adopt best practices as regards the length of maternity leave and in its [resolution](#) of 27 September 2007, it urged the Member States to mutualise the costs of maternity and parental leave allowances in order to ensure that women no longer represent a more costly source of labour than men.

This is why the Commission has finally decided to review Directive 92/85/EEC on pregnant workers and workers who have recently given birth or are breastfeeding and is proposing to revise it.

CONTENT: the proposed Directive amends the existing Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, and in particular its Articles 8 (Maternity leave), 10 (Prohibition of dismissal) and 11 (Employment rights).

1) Maternity leave: Article 8 is amended so as to increase the duration of maternity leave to 18 weeks, 6 of which must be taken after childbirth. This corresponds to the length of leave provided for in the ILO Maternity Protection Recommendation, adopted in 2000, and is intended to generally improve the health and safety of women giving birth to a child. This increase is designed to allow women to recover from pregnancy and childbirth, to have more time with their children, and to be able to breastfeed for a longer period. Under the current Directive the duration is 14 weeks, 2 weeks of which are compulsory before or after confinement.

Other measures related to maternity leave are as follows:

- women falling within the scope of the Directive would be able to choose freely the time at which the non-compulsory portion of the leave is taken (before or after childbirth), and would thus no longer be obliged to take a specific portion of the leave before childbirth as is presently the case in some Member States. It is for the Member States to decide on notification periods;
- where childbirth occurs after the due date, the prenatal portion of the leave is extended to the actual date of birth, without any reduction in the post-natal portion of the leave, in order to guarantee that women have sufficient time to recover from giving birth and to breastfeed;
- the Member States are to decide on the length of additional leave to be granted in the event of premature childbirth, children hospitalised at birth, new-born children with disabilities and multiple births. The extra time should allow women to recover from the particular stress that premature childbirth, children hospitalised at birth, the birth of children with disabilities and multiple births usually cause;
- any period of sick leave, up to 4 weeks before confinement, in the event of illness or complications arising out of pregnancy or childbirth shall not shorten the period of maternity leave, again in the interest of women's health.

Prohibition of dismissal: points 1 and 2 of Article 10 are amended: in order to take account of the case law of the European Court of Justice, it is proposed to prohibit all preparations for a possible dismissal not related to exceptional circumstances, during the maternity leave. Under the current Directive, the employer must duly substantiate the grounds for such dismissal in writing only in cases where a woman is dismissed while on maternity leave. The proposed amendment extends this duty of the employer to cases where a woman is dismissed within 6 months of the end of her maternity leave, if the woman requests such a written motivation. The aim of this provision is not to amend any rules on individual or collective dismissal, but only to provide, in the interest of both the business and the worker concerned, that during a certain period after the return from maternity leave, any dismissal should be duly motivated in writing if the worker so requests.

Employment rights: the new point 2(c) of Article 11 makes it clear that following maternity leave, the woman has the right to return to the same job or to an equivalent post on terms and conditions that are no less favourable, and the right to benefit from any improvement in working conditions to which she would have been entitled during her absence. This is taken from Directive 2002/73/EC, as recast in [Directive 2006/54/EC](#).

Rights relating to the employment contract:

- the new point 2(c) of Article 11 makes it clear that following maternity leave, the woman has the right to return to the same job or to an equivalent post on terms and conditions that are no less favourable, and the right to benefit from any improvement in working conditions to which she would have been entitled during her absence;
- point 3 modifies the existing rule on the payment given during maternity leave: it provides for the principle of the payment of the full monthly salary received prior to the maternity leave. However, this is not mandatory since this payment may be subject to a ceiling, to

be determined by the Member State, provided that it is not set below the rate for sick pay. Member States may determine if the level of the payment during maternity leave corresponds to the one of the last monthly salary before maternity leave or to an average to be calculated over a certain period;

- according to new point 5 of Article 11, a worker during maternity leave or when returning from maternity leave has a right to ask her employer to adapt her working patterns and hours to the new family situation and the employer is obliged to consider such a request. However, the employer has no obligation to accept or follow-up on the request. The detailed rules on the exercise of this right are to be laid down by the Member States.

Burden of proof, retaliation measures: the provision on the burden of proof is common to most Directives on equal treatment between women and men. In judicial procedures, the general rule is that a person who alleges something must prove it. However, in equal treatment cases, it is often extremely difficult to obtain the evidence necessary to prove the case, as it is often in the hands of the respondent. The provision on victimisation is also commonly found in equal treatment Directives. Effective legal protection must include protection against retaliation. Victims may be deterred from exercising their rights on account of the risk of retaliation, and individuals must therefore be protected from any adverse treatment where they exercise the rights conferred by the Directive.

Penalties: in accordance with the case law of the Court of Justice, the provision on penalties provides that there should be no upper limit on the compensation payable in the event of a breach of the principle of equal treatment. This provision does not require criminal penalties to be introduced.

Provide a higher level of protection in the Member States: the proposal reaffirms the standard provision, which allows the Member States to provide a higher level of protection than that guaranteed by the Directive and confirms that there should be no lowering of the level of protection already afforded by the Member States when implementing it. It also stipulates that Member States shall ensure that the body or bodies designated for the promotion, analysis, monitoring and support of equal treatment of all persons without discrimination on grounds of sex shall be competent in addition for issues falling within the scope of this Directive, where these issues pertain primarily to equal treatment and not to the worker's health and safety.

This provision gives the Member States a period of 2 years to transpose the Directive into national law.